IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

Crl.MC.No. 2634 of 2007()

C.C.708/2000 BEFORE THE CHIEF JUDICIAL MAGISTRATE, ERNAKULAM

PETITIONER:

K.S. REMA DEVI, W/O. CHANDRA DUTH,
RAM NIVAS, KUTHIYATHODU P.O., CHERTHALA.

BY ADV. SMT.N.SINDHU

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. M/S. R.K.D. FINANCIAL SERVICES LTD.,
2ND FLOOR, CHANDRIKA BUILDING, M.G. ROAD,
ERNAKULAM, REP. BY P.V. POLACHAN.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2634 of 2007

Dated this the 18th day of August, 2007

O R D E R

The petitioner, a woman, faces allegations under Section 138 of the Negotiable Instruments Act. The case was posted for hearing to 16.08.07. On that date, the petitioner could not appear. A warrant of arrest has been issued against the petitioner. She finds such warrant chasing her. The case is now posted to 18.09.07.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Her absence before court on 16.08.07 was not wilful and was on account of reasons beyond her control. The petitioner is wiling to surrender before the learned Magistrate and seek regular bail. But she apprehends that before she is able to surrender before the learned Magistrate, she may be taken into custody in execution of the non bailable warrant. She further apprehends that her application may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. It is therefore prayed that directions under Sections 482 Cr.P.C may be issued in favour of the petitioner.

3. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of an accused who apprehends arrest in execution of a non bailable warrant issued in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which she could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

5. This Crl.M.C is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate

must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself. There shall be a further direction that the warrant of arrest ordered to be issued on 16.08.07 shall not be executed till 18.09.07. On or before that date the petitioner has to surrender and seek regular bail.

(R.BASANT, JUDGE)

rtr/-